

# SENATE BILL No. 391

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 33-4-7-12; IC 33-13.

**Synopsis:** Addition of magistrates to 1985 judges' fund. Allows a person serving as a full-time magistrate on July 1, 2004, and requires a person who begins serving as a full-time magistrate after that date, to become a participant in the judges' 1985 benefit system. Allows magistrates who are participants in the judges' 1985 benefit system to purchase, at full actuarial cost, service credit for prior service covered by an Indiana public employees' retirement fund. (The introduced version of this bill was prepared by the pension management oversight commission.)

**Effective:** July 1, 2004.

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January 12, 2004, read first time and referred to Committee on Pensions and Labor.

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Introduced

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

## SENATE BILL No. 391

A BILL FOR AN ACT to amend the Indiana Code concerning pensions.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 33-4-7-12 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 12. **(a) Except as**  
3 **provided in subsection (b),** a magistrate may:

4 (1) participate in the public employees' retirement fund as  
5 provided in IC 5-10.3; or

6 (2) elect to remain in the judges' retirement system under  
7 IC 33-13 if the magistrate had previously participated in the  
8 system.

9 **(b) A person who:**

10 **(1) is serving as a full-time magistrate on July 1, 2004, and**  
11 **makes an election under IC 33-13-10.1-3.5; or**

12 **(2) begins serving as a full-time magistrate after July 1, 2004;**  
13 **shall, beginning January 1, 2005, participate in the judges' 1985**  
14 **benefit system under IC 33-13-10.1.**

15 SECTION 2. IC 33-13-8-2 IS AMENDED TO READ AS  
16 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. The following words  
17 and phrases as used in this chapter, unless different meanings are



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plainly indicated by their context, shall have the following respective meanings:

"Americans with Disabilities Act" refers to the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments and regulations related to the Act.

~~"His" and "widow" means "her" and "widower" in the event the participant is a woman.~~

"Fund" means the Indiana judges' retirement fund, the fund created by this chapter.

"Board" means the board of trustees of the public employees' retirement fund.

"Employer" means the state of Indiana.

"Judge" means any person who has served, is serving, or shall serve as a regular judge of any of the following courts:

Supreme court of the state of Indiana.

Court of appeals of the state of Indiana.

Circuit court of any judicial circuit.

Superior court of any county or counties.

Criminal court of any county having a separate criminal court.

Probate court of any county having a separate probate court.

Juvenile court of any county having a separate juvenile court.

Municipal court of any county.

County court of any county or counties.

"Participant" means any judge participating in the fund. **After December 31, 2004, "participant" means a judge or full-time magistrate participating in the fund.**

"Services" means the period beginning on the first day upon which any person first became a judge, whether such date is prior or subsequent to March 11, 1953, and ending on the date under consideration, including all intervening employment as a judge, following resignation or expiration of any term of election or appointment. Services in any fraction of a month shall be considered as a month of service. However, no more than one (1) month shall be credited for services in any one (1) calendar month. If a judge is elected or appointed and serves one (1) or more terms or part of a term, then retires from office, but at a later period, or periods, is appointed or elected and serves as judge, the judge shall pay into said fund during all the periods served as judge, except as otherwise provided in this chapter, whether said periods be a connected period or disconnected period, but shall not be required to pay into said fund at any time when the judge is not serving as judge, or during any period of service as a senior judge under IC 33-4-8, except as otherwise provided in this

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chapter. **After December 31, 2004, "services" includes services performed by a full-time magistrate participating in the fund.**

"Fiscal year" means the period beginning on July 1, in any year, and ending on June 30 of the succeeding year.

"Salary" means the total salary paid to any participant by the state of Indiana and by a county or counties, determined without regard to any salary reduction agreement established under Section 125 of the Internal Revenue Code.

SECTION 3. IC 33-13-10.1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. This chapter applies only to an individual who:

- (1) begins service as a judge after August 31, 1985;
- (2) **is serving as a full-time magistrate on July 1, 2004, and makes an election under section 3.5 of this chapter; or**
- (3) **begins service as a full-time magistrate after July 1, 2004.**

SECTION 4. IC 33-13-10.1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. (a) Each person who:

- (1) begins service as a judge after August 31, 1985; and
- (2) is then not a participant;

shall become a participant in the fund.

(b) **An individual who is serving as a full-time magistrate on July 1, 2004, and makes an election under section 3.5 of this chapter is, beginning January 1, 2005, a participant in the judges' 1985 benefit system under this chapter.**

(c) **An individual who begins serving as a full-time magistrate after July 1, 2004, is a participant in the judges' 1985 benefit system beginning on the later of the following:**

- (1) **January 1, 2005.**
- (2) **The date the individual begins service as a full-time magistrate.**

SECTION 5. IC 33-13-10.1-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3.5. **A person who is serving as a full-time magistrate on July 1, 2004, may elect to become a member of the judges' 1985 benefit system under this chapter. An election under this section:**

- (1) **must be made in writing;**
- (2) **must be filed with the PERF board, on a form prescribed by the board, before October 1, 2004; and**
- (3) **is irrevocable.**

SECTION 6. IC 33-13-10.1-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. Any participant who:

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(1) ceases service:

(A) as a judge; or

(B) after December 31, 2004, as a judge or a full-time magistrate;

other than by death or disability; and

(2) is not eligible for a retirement benefit under this chapter;

is entitled to withdraw from the fund, beginning on the date specified by the participant in a written application. The date upon which the withdrawal begins may not be before the date of final termination of employment or the date thirty (30) days before the receipt of the application by the board. Upon the withdrawal, the participant is entitled to receive the total sum contributed, payable within sixty (60) days from the date of withdrawal application or in such monthly installments as the participant may elect.

SECTION 7. IC 33-13-10.1-6, AS AMENDED BY P.L.194-1999, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 6. Any participant whose employment as a judge, or after December 31, 2004, as a judge or a full-time magistrate, is terminated is entitled to a retirement benefit computed under section 7 of this chapter, beginning on the date specified by the participant in a written application, if all of the following conditions are met:

(1) The date upon which the benefit begins is not before the date of final termination of employment of the participant or the date thirty (30) days before the receipt of the application by the board.

(2) The participant:

(A) has attained is at least the age of sixty-two (62) years of age and has at least eight (8) years of service credit;

(B) is at least fifty-five (55) years of age and the participant's age in years plus the participant's years of service is at least eighty-five (85); or

(C) has become permanently disabled.

(3) The participant is not receiving any salary from the state for services currently performed, except for services rendered in the capacity of judge pro tempore or senior judge.

SECTION 8. IC 33-13-10.1-14, AS AMENDED BY P.L.61-2002, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 14. (a) This section applies to a person who:

(1) is:

(A) a judge; or

(B) after December 31, 2004, a judge or a full-time magistrate;

participating under this chapter;

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(2) before becoming:

(A) a judge; or

(B) **after December 31, 2004, a judge or a full-time magistrate;**

was appointed by a court to serve as a full-time referee, full-time commissioner, or full-time magistrate;

(3) was a member of the public employees' retirement fund during the employment described in subdivision (2); and

(4) received credited service under the public employees' retirement fund for the employment described in subdivision (2).

(b) If a person becomes a participant in the judges' 1985 benefit system under section 1 of this chapter, credit for prior service by the judge, **or after December 31, 2004, the judge or the full-time magistrate**, as a full-time referee, full-time commissioner, or full-time magistrate shall be granted under this chapter by the board if:

(1) the prior service was credited under the public employees' retirement fund;

(2) the state contributes to the judges' 1985 benefit system the amount the board determines necessary to amortize the prior service liability over a period determined by the board, but not more than ten (10) years; and

(3) the judge **or the full-time magistrate** pays in a lump sum or in a series of payments determined by the board, not exceeding five (5) annual payments, the amount the judge **or the full-time magistrate** would have contributed if the judge **or the full-time magistrate** had been a member of the judges' 1985 benefit system during the prior service.

(c) If the requirements of subsection (b)(2) and (b)(3) are not satisfied, a participant is entitled to credit only for years of service after the date of participation in the **judges'** 1985 benefit system.

(d) An amortization schedule for contributions paid under subsection (b)(2) or (b)(3) must include interest at a rate determined by the board.

(e) The following provisions apply to a person described in subsection (a):

(1) A minimum benefit applies to participants receiving credit in the judges' 1985 benefit system from service covered by the public employees' retirement fund. The minimum benefit is payable at sixty-five (65) years of age or when the participant is at least fifty-five (55) years of age and meets the requirements under section 6(2)(B) of this chapter and equals the actuarial equivalent of the vested retirement benefit that is:

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(A) payable to the member at normal retirement under IC 5-10.2-4-1 as of the day before the transfer; and

(B) based solely on:

(i) creditable service;

(ii) the average of the annual compensation; and

(iii) the amount credited under IC 5-10.2 and IC 5-10.3 to the annuity savings account of the transferring member as of the day before the transfer.

(2) If the requirements of subsection (b)(2) and (b)(3) are satisfied, the board shall transfer from the public employees' retirement fund to the judges' 1985 benefit system the amount credited to the annuity savings account and the present value of the retirement benefit payable at sixty-five (65) years of age or at least fifty-five (55) years of age under section 6(2)(B) of this chapter that is attributable to the transferring participant.

(3) The amount the state and the participant must contribute to the judges' 1985 benefit system under subsection (b) shall be reduced by the amount transferred to the judges' 1985 benefit system by the board under subdivision (2).

(4) If the requirements of subsection (b)(2) and (b)(3) are satisfied, credit for prior service in the public employees' retirement fund as a full-time referee, full-time commissioner, or full-time magistrate is waived. Any credit for the prior service under the judges' 1985 benefit system may be granted only under subsection (b).

(f) To the extent permitted by the Internal Revenue Code and the applicable regulations, the judges' 1985 benefit system may accept, on behalf of a participant who is purchasing permissive service credit under subsection (b), a rollover of a distribution from any of the following:

(1) A qualified plan described in Section 401(a) or Section 403(a) of the Internal Revenue Code.

(2) An annuity contract or account described in Section 403(b) of the Internal Revenue Code.

(3) An eligible plan that is maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state under Section 457(b) of the Internal Revenue Code.

(4) An individual retirement account or annuity described in Section 408(a) or Section 408(b) of the Internal Revenue Code.

(g) To the extent permitted by the Internal Revenue Code and the applicable regulations, the judges' 1985 benefit system may accept, on

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behalf of a participant who is purchasing permissive service credit under subsection (b), a trustee to trustee transfer from any of the following:

- (1) An annuity contract or account described in Section 403(b) of the Internal Revenue Code.
- (2) An eligible deferred compensation plan under Section 457(b) of the Internal Revenue Code.

SECTION 9. IC 33-13-10.1-14.5, AS AMENDED BY P.L. 61-2002, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 14.5. (a) This section applies only to a person who:

(1) is:

(A) a judge; or

**(B) after December 31, 2004, a judge or a full-time magistrate;**

participating under this chapter;

(2) before becoming:

(A) a judge; or

**(B) after December 31, 2004, a judge or a full-time magistrate;**

was a member of an Indiana public employees' retirement fund; (3) received credited service under an Indiana public employees' retirement fund for the employment described in subdivision (2), and the credited service is not eligible for prior service credit under section 14 of this chapter;

(4) has not attained vested status under an Indiana public employees' retirement fund for the employment described in subdivision (2); and

(5) has at least eight (8) years of service credit in the judges' retirement system.

(b) If a person becomes a participant in the judges' 1985 benefit system under this chapter, credit for service described in subsection (a) shall be granted under this chapter by the board if:

(1) the prior service was credited under an Indiana public employees' retirement fund; and

(2) the judge **or the full-time magistrate** pays in a lump sum or in a series of payments determined by the board, not exceeding five (5) annual payments, the amount determined by the actuary for the 1985 benefit system as the total cost of the service.

(c) If the requirements of subsection (b) are not satisfied, a participant is entitled to credit only for years of service after the date of participation in the 1985 benefit system.

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(d) An amortization schedule for contributions paid under this section must include interest at a rate determined by the board.

(e) If the requirements of subsection (b) are satisfied, the appropriate board shall transfer from the retirement fund described in subsection (a)(2) to the judges' 1985 benefit system the amount credited to the judge's **or the full-time magistrate's** annuity savings account and the present value of the retirement benefit payable at sixty-five (65) years of age that is attributable to the transferring participant.

(f) The amount a participant must contribute to the judges' 1985 benefit system under subsection (b) shall be reduced by the amount transferred to the judges' 1985 benefit system by the board under subsection (e).

(g) If the requirements of subsection (b) are satisfied, credit for prior service in an Indiana public employees' retirement fund is waived.

(h) To the extent permitted by the Internal Revenue Code and the applicable regulations, the judges' 1985 benefit system may accept, on behalf of a participant who is purchasing permissive service credit under subsection (b), a rollover of a distribution from any of the following:

(1) A qualified plan described in Section 401(a) or Section 403(a) of the Internal Revenue Code.

(2) An annuity contract or account described in Section 403(b) of the Internal Revenue Code.

(3) An eligible plan that is maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state under Section 457(b) of the Internal Revenue Code.

(4) An individual retirement account or annuity described in Section 408(a) or Section 408(b) of the Internal Revenue Code.

(i) To the extent permitted by the Internal Revenue Code and the applicable regulations, the judges' 1985 benefit system may accept, on behalf of a participant who is purchasing permissive service credit under subsection (b), a trustee to trustee transfer from any of the following:

(1) An annuity contract or account described in Section 403(b) of the Internal Revenue Code.

(2) An eligible deferred compensation plan under Section 457(b) of the Internal Revenue Code.

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